IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 868 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RATANSINH DALSUKHBHAI

Versus

STATE OF GUJARAT

Appearance:
MR RM PARMAR for Appellant
MR KG SHETH, APP for Respondent

CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE J.R.VORA

Date of decision: 25/06/2002

ORAL JUDGEMENT (Per : MR.JUSTICE J.R.VORA)

1. The present appeal is filed by the original accused of Sessions Case No. 299/2000 of the Court of

Additional Sessions Judge, Panchmahals at Godhra. The present appellant was convicted for the offence punishable under Section 302 of the IPC and was sentenced to life imprisonment and fine of Rs. 100/-.

2. The brief facts of the case reveal that both the deceased victims of this case Mandradaji and Valiben resided at village Gopipura. The complainant Lalsinhbhai also resided with his family in the same village. He and his wife were doing labour work in quarry. On the day of the incident i.e. 28th August, 2000, complainant Lalsinhbhai along with his wife had been to quarry for the labour work and returned at 8.00 p.m. at their residence. Lalsinhbhai and his wife have two children Zavariben aged about 9 and Karansinh, younger than Zavariben. While the complainant returned to his residence, his daughter Zavariben told him that the accused - appellant herein had quarreled with both the deceased Mandradaji and Valiben. It was also conveyed by Zavariben to the complainant that the accused had beaten Mandradaji and Valiben on that day. Since it was night, the complainant did not visit to the house of Mandradaji and after his supper he slept. The next day was a closed day for the quarry and at about 6.00 in the morning when complainant was going to fetch water from the hand pump and passed near the residence of Mandradaji, he noticed that Mandradaji was sleeping on a cot while Valiben was sleeping on the floor. Mandradaji was the uncle of complainant Lalsinhbhai. The complainant tried to awaken both of them but none of them had awakened, and the complainant noticed that on the body of both victims there were marks of beating and injuries. Complainant further ascertained that Valiben had already dead while Mandradaji was though living but was unconscious and was bleeding. The complainant had been to his residence again and managed to inform Sarpanch of village Samanthsinh and his neighbour Laxmansinh. Daughter and son of Mandradraji, who were residing at Baroda at that time were also informed. The complainant further stated in the complaint that the present appellant was holding the land of Mandradaji by way of mortgage and Mandradaji wanted to redeem his agricultural land and that was the dispute between them. Mandradaji thereafter was sent to hospital and during treatment he also died.

3. Halol Police Station registered the offence against the present appellant and after investigation, a charge sheet was submitted against the accused for the offence punishable under Section 302 of the IPC in the Court of Judicial Magistrate, First Class, Halol. The learned Judicial Magistrate, Halol, committed the case to

the Court of Sessions, Panchmahals at Godhra, which was registered as Sessions Case No. 299/2000.

4. Vide Exh.2, a charge was framed against the appellant, to which the appellant pleaded not guilty. The prosecution examined witnesses Govindbhai, Karansinh, panch witnesses Vijaysinh, Anupbhai, Kalyansinh, witness Samanthsinh, Narottam, Kanubhai, Laxmansinh, minor Zavariben, Dr.Panchal, witness Santaben, Police Constable Jayantibhai, Head Constable Dilipbhai, Head Constable Shantilal, Dr. Dinesh Patel, Dr. Rathod, Head Constable Jashvansinh, Police Sub-Inspector Mitabhai and Investigating Officer Mr. Pandore. The prosecution also examined minor Karansinh. In addition to this, prosecution also produced documentary evidence. After recording the statement of appellant under Section 313 of the Cr.P.C. and after hearing both the sides, learned Addl. Sessions Judge, Panchmahals at Godhra, vide his judgment and order dated 12th October, 2001, convicted the appellant for the offence under Section 302 of the IPC as aforesaid and sentenced him to life imprisonment. Being aggrieved, this appeal through jail has been filed by the appellant.

5. We have heard learned advocate Mr. R.M. Parmar on behalf of the appellant at length at this admission stage and we have carefully gone through the record and proceedings which are available.

6. The case of prosecution hinges on the deposition of Zavariben, minor daughter of complainant Lalsinhbhai. Zavariben is examined vide Exh.21. She was aged 10 when she was examined by the Trial Court. It appears that the Trial Court has endeavoured to find out the understanding and intellect of the witness. She was asked questions by the court, to which the witness correctly replied. The Trial Court, therefore, came to the conclusion that the witness, though a child, was sound enough to depose. In her deposition, she has stated that Mandradaji and Valiben were her grand parents. On the day of the incident, her parents had been to quarry for the labour work, the accused - appellant visited the residence of deceased and the accused had beaten both of them by stick of wood. Hearing the shouts of Valiben, though she was cooking meal she ran to the residence of Mandradaji and Valiben. She witnessed that the accused was beating Valiben and Mandradaji both by stick. She also noticed that a stick blow was inflicted by Ratansinh i.e. appellant on the head of Mandradaji. Having seen this, the witness again ran to her own residence and in the evening when her parents came to the house she narrated

this story. This witness identified the accused and the muddamal stick by which the accused had beaten both the deceased. The record reveals that this minor child witness was cross-examined by the defence, but nothing adverse could be brought out by the defence so as to trash out the say of the child witness.

7. The other important eye witness is also a child witness - Karansinh, who is younger brother of witness Zavariben and he has been examined at Exh.49. This witness also faced the questions from the court to ascertain his mental and intellectual capacity to depose. The Trial Court satisfied that though the witness was a child witness but he was capable enough to depose. Of course, witness Karansinh is not an eye witness but he fully supports the story of witness Zavariben, who had actually witnessed the incident. He says that his sister Zavariben had seen the incident and had conveyed to him. He also deposed that in the late evening when his parents came, this fact was conveyed to their parents by Zavariben.

8. In support of the above evidence, we noticed the important witnesses i.e. Lalsinhbhai, the complainant in this case who has been examined at Exh.15 and witness Samantsinh who is examined at Exh.17. Witness Laxmansinh corroborates the complaint and he cannot be discredited by the defence in his cross-examination. Witness Samantsinh who has been examined at Exh.17 corroborates fully witness Lalsinhbhai and states that on the day of the incident i.e. on the next day of the incident, early in the morning, Lalsinh and Laxmansinh both came to his house and conveyed that Valiben and Mandradaji had been beaten by the appellant and Valiben had already died and Mandarsinh was seriously injured. This witness being Sarpanch, informed Halol Police Station and thereafter police visited the place of incident.

9. So far as the death of both victims being homicide, there is no dispute. Both the Doctors who have performed autopsy on the deceased, have opined that the death of the victims were homicidal. Injuries to them were sufficient in the ordinary course of nature to cause death.

10. Learned advocate for the appellant vehemently argued that the Trial Court ought not to have relied upon the child witness who can be easily tutored and may give evidence as might have been tutored to them. It was also vehemently argued that in fact there was no motive for the crime. It was also stated that the fact has come in

the evidence that both these spouses (deceased in this case) were frequently quarrelling with each other and therefore it was argued that the possibility remains that both might have been injured in an inter se quarrel. It was also argued that both the child witnesses were brought to the court from the custody of their relatives and sent back in the custody of their relatives and, therefore, there were all possibilities to tutor them.

11. When we have carefully gone through the evidence on record and the contentions raised. Needless it is to that it may be dangerous to rely absolutely and only upon on the evidence of a child witness. At the same time it cannot be said that the evidence of the child witness would always stand irretrievably stigmatised. It is not the law that if the witness is a child, his evidence shall be rejected, even if it is found reliable. The law, is, that evidence of child witness must be evaluated more carefully and with greater circumspection because the child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring. It always depends upon the facts of the case. While we scrutinise the evidence of Zavariben and her brother Karansinh, it clearly appears that both of them are natural witnesses. Not only that, on appreciating the evidence of both the child witnesses, it is emphatically clear that both the witnesses were capable of saying only what they actually saw and heard. Even when the evidence of both child witnesses along with the cross-examination of the defence is appreciated, the only conclusion which surfaces from the exercise, is that witness Zavariben was extremely truthful and there were no obvious or apparent or any other reasons for Zaveriben to state in the court which was not true. It appears that witness Zavariben and witness Karansinh both without any hesitation have replied to queries of the court as well as they have also withstood the weighty cross-examination of defence in a natural manner. The allegation that both the witnesses might have been tutored, finds no foundation by scanning their evidence.

12. Not only that but the evidence of these witnesses finds support from the other witnesses as aforesaid. Two other witnesses viz. complainant Lalsinhbhai Exh.15 and Sarpanch Samanthsinh - Exh. 17 lend total corroboration to the child witnesses. Nothing could be said by the defence so far as these witnesses are concerned.

13. Therefore, in this view of the matter, on re-appreciation of the evidence, the inescapable conclusion would be, the prosecution was successful in

establishing the guilt of the present appellant. The contention of the defence that both the deceased might have quarreled inter se and might have injured each other, is also baseless because the age of both the deceased was about 60, and one of the spouses i.e. deceased Mandradaji was crippled in one hand. One cannot imagine for a while that such a person can beat and injure his wife by a stick to the extent of causing such serious injuries which she had received resulting in death or that the deceased Valiben also could have inflicted such serious injuries on the person of her own husband Mandradaji. When the couple was discovered, one was dead, the other was unconcious. No stick or sticks or weapons were discovered near the bodies. Thus they could not have beaten each other to death.

14. In this view of the matter, on overall careful scrutiny and reappreciation of the evidence after considering the contentions raised, no points have arisen to consider in this appeal. We do not find any reason to interfere with the impugned judgment and hence the appeal filed by the original accused deserves to be dismissed. Accordingly, the appeal is dismissed.

(Y.B. Bhatt, J.)

(J.R. Vora, J.)

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